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SUBJECT: INTERNATIONAL MARITIME ORGANIZATION (IMO) REPORT OF THE  
NINETY-SECOND SESSION OF THE LEGAL COMMITTEE, PARIS, OCTOBER 16-20  
[1](#)2006.

[1](#)1. SUMMARY: The International Maritime Organization (IMO) Legal  
Committee held its 92nd session in Paris, France at UNESCO, October  
16-20 (LEG 92), under the chairmanship of Professor Lee-Sik Chai  
(Republic Of Korea). The Legal Committee discussed, among other  
issues, the Draft Wreck Removal Convention (DWRC), provisions of  
financial security relating to the Athens Convention Protocol, and  
voluntary guidelines for the fair treatment of seafarers. The  
Committee re-elected Professor Lee-Sik Chai as Chairman for 2007 by  
acclamation and also by acclamation elected Mr. Kofi Mbiah (Ghana)  
and Mr. Walter de Sa Leitao (Brazil) as Vice-Chairmen. END  
SUMMARY.

[1](#)2. DELEGATION INFORMATION: Delegations from sixty-eight (68)  
States, associate member Hong Kong, along with twenty (20) other  
intergovernmental and nongovernmental bodies, including the  
International Labour Organization, attended LEG 92. The United  
States delegation for LEG 92 consisted of Captain Chuck Michel, U.S.  
Coast Guard (Representative); Lieutenant Commander Laurina  
Spolidoro, U.S. Coast Guard (Alternate); and the following advisers:  
Lieutenant Commander Bud Darr, U.S. Coast Guard; Lieutenant Lonnie  
Kishiyama, Department of Homeland Security Office of the General  
Counsel; Mr. Robert Blumberg, Department of State, Bureau of Oceans  
and International Environmental and Scientific Affairs; Mr. Gregory  
Linsin, Department of Justice, Environment and Natural Resources  
Division; Mr. Stephen Miller, Department of State, Office of  
Transportation Policy; Mr. Walter Rabe, U.S. Coast Guard; Special  
Agent John Cornett, U.S. Coast Guard Investigative Service; Ms.  
Lizabeth Burrell, Maritime Law Association of the United States; Mr.  
Douglas Stevenson, Center for Seafarers' Rights, Seamen's Church  
Institute.

[1](#)3. DRAFT WRECK REMOVAL CONVENTION (DWRC):

This Convention is being drafted in order to create a uniform scheme

for States Parties to take measures established under the Convention to remove wrecks posing a hazard in the Exclusive Economic Zone of a State Party. The Convention provides for compulsory insurance and direct action against the insurer. The negotiations have been ongoing for well over ten (10) years and continued at LEG 92.

1A. The DWRC will be taken to a Diplomatic Conference in Nairobi, Kenya from 14 to 18 May 2007. Two suggestions, discussed informally, for Chairmanship of the Dip Con include Mr. Gaute Sivertsen (Norway) and Mr. Mark Gauthier (Canada). The IMO Secretariat welcomes other suggestions.

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1B. The Committee conducted an article-by-article review of the draft text considering and approving most of the editorial amendments proposed by the Secretariat and the lead delegation of the Netherlands in the annex to LEG 92/4. The text for the diplomatic conference will be prepared and circulated by the Secretariat as soon as possible. The Committee also considered the

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substantive issues raised in written submissions to the Committee. As discussed below, two significant substantive changes will be reflected in the text for the diplomatic conference. The text of paragraph 2 of article 13 will be placed in square brackets, following lengthy and controversial discussions of provisions to allow States to opt to extend the scope of all or portions of the DWRC to a coastal State's territory and territorial sea. Article 16 will incorporate by reference the compulsory dispute settlement mechanisms in Part XV of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

1C. Article 11(1) - terrorism exemption. The International Group of P and I Associations (P and I Clubs) and the International Chamber of Shipping (ICS) proposed to exempt shipowners from liability for acts of terrorism by amending article 11(1)(a) to include the word "terrorism" as a complete defense. LEG 92/4/4. The Netherlands and the U.S. were in favor of retaining the current base text, but some

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delegations supported the exemption. The issue remained unresolved as the Chairman noted that without a Member Government proposal to modify the text, it would remain unchanged, and the issue is likely to be raised again at the diplomatic conference.

1D. Article 16 - mandatory dispute settlement.

(1) Italy and Germany proposed two alternative amendments to article 16 concerning the settlement of disputes. LEG 92/4/1. The first would incorporate the mandatory dispute settlement mechanism in Part XV of UNCLOS. The second would require submission of disputes to the International Tribunal on the Law of the Sea (ITLOS). Some delegations, including the U.S., preferred to leave the draft text unchanged. The ITLOS option was rejected, and the Chairman invited Italy and Germany to work with interested delegations to revise their proposed text to take into account concerns raised about the complexity of importing UNCLOS Part XV.

(2) The new proposal, in LEG 92/WP.6/Rev.1, was adopted over explicit objections from the U.S. and several other delegations that the Committee had not taken a decision to amend the current text of article 16.

(3) Delegations that supported maintaining the current text, some of whom could accept alternative text as a compromise, included: Argentina, Turkey, Cyprus, U.S., Panama, Ecuador, Ukraine, the Bahamas, the Netherlands, China, Liberia, Sweden, India, Republic of Korea, Belize, Ghana, the Philippines, Nigeria, Denmark, U.K., and Algeria. The Secretariat reported a tally of those who intervened: twenty-one (21) spoke in favor of the current text; twenty-nine (29) spoke in favor of the first option, five (5) or six (6) of whom preferred the current text; eight (8) spoke in favor of the second option. When the compromise text in LEG 92/WP.6/Rev.1 was accepted by the Chairman, the U.S. and several other delegations (Turkey,

Panama, Cyprus, and Liberia) intervened to state their understanding that a decision had not yet been taken to amend the current text. Several other delegations sided with the Chair's recollection that a decision had been taken, and the U.S., Panama, and Cyprus requested to have their objections noted in the report.

#### 1E. Extension of the scope of the Convention.

(1) Norway, Italy, and Denmark proposed two alternatives to extend the scope of the Convention beyond the Exclusive Economic Zone (EEZ) into a coastal State's territory, including the territorial sea. LEG 92/4/3. The first alternative was a mandatory extension of the scope of the Convention through an amendment to the definition of "Convention Area." The second alternative was in the form of an opt-in provision that would allow States Parties to apply the provisions of the DWRC to their territory, including the territorial sea as against the world, including States Parties and potentially non States Parties (see below discussion regarding Article 17) who have not similarly opted-in. The second alternative included consequential amendments to other provisions in the DWRC, including the definitions of "Convention Area" and "ship."

(2) Debate on this issue was lengthy and contentious with Cyprus, the Netherlands, and others calling for a vote on the issue of whether to amend the current base text. As a compromise, the Chair accepted a subsequent proposal from Denmark to place article 13(2) in square brackets for the diplomatic conference and invite interested delegations to meet in London 12-16 March 2007, and by correspondence to further consider the issue and to develop text that might be more acceptable.

(3) During the review of the draft report, there was significant debate over whether a majority of the Committee had preferred to keep the current base text rather than amend it. It was recalled

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that out of twenty-eight (28) delegations who spoke, fifteen (15) had preferred to keep the present text, but some of those delegations could accept some kind of opt-in provision. In the end, it was decided that the report would indicate that although a slight majority favored retaining the current text, the Committee was divided.

1F. Article 17 - application to non States Parties. The U.S. proposal to amend the text of article 17 to provide that the Convention does not purport to alter rights of non Parties under customary international law was supported by Japan, Turkey, Peru, and Brazil. Cyprus and Argentina expressed concerns with the Convention's application to non States Parties if the scope of the Convention is extended to the territorial sea or internal waters. Canada, Greece, and most of the other delegations stated that the U.S. proposal was not necessary because it is self-evident, under article 34 of Vienna Convention on the Law of Treaties 1969, that States cannot be bound without their consent. Canada added that including the U.S. proposed language would be harmful in that it would call into question the customary international law codified in article 34 of the Vienna Convention for treaties that did not contain similar language. The U.S. then requested that it be reflected in the report that the Committee had decided that the DWRC does not bind and cannot be applied to non-Parties who have not consented to be bound, in accordance with the Vienna Convention on the Law of Treaties.

14. PROVISIONS OF FINANCIAL SECURITY/CREW CLAIMS: The Legal Committee encouraged the Joint IMO/ILO ad hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers to continue its work on finding a longer term sustainable solution to the problem. The Joint Secretariat was invited to schedule a meeting for the sixth session

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of the Joint Working Group.

15. PROVISIONS OF FINANCIAL SECURITY/ATHENS CONVENTION: The Legal Committee adopted Guidelines for implementation of the Athens

Convention as proposed by Norway in LEG 92/WP.5. The Guidelines encourage States to ratify the Convention with a reservation allowing States to issue and accept insurance certificates certifying that cover for terrorism liability, in the war risks market, is available and limited to SDR 250,000 per passenger up to a total of SDR 340,000,000 per ship, per incident and further limiting carrier liability for acts of terrorism to the same amount.

The U.S. intervened to reiterate our procedural treaty law concerns with employing a standard reservation clause to amend important terms of the 2002 Protocol and our position that carriers should not be exempt from liability for acts of or related to terrorism without regard to fault. Although several delegations, including Denmark, acknowledged that the Diplomatic Conference had decided that carriers should not be exempt from liability for terrorism, the prevailing view was that the compromise Guidelines were necessary to allow States to ratify the 2002 Protocol and presented the best possible current solution to the problem of the market's inability to meet the compulsory insurance requirements of the Protocol.

¶6. FAIR TREATMENT OF SEAFARERS: As decided at LEG 91, the Legal Committee convened an ad hoc Working Group to review the Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident that entered into effect on 1 July 2006. The Working Group was tasked to consider concerns raised by Governments at LEG 91 and during the intersessional period.

¶A. The Working Group considered the issues noted in the paper submitted by the U.S., Canada, Spain, the Netherlands, and France. LEG 92/6/2. Although some delegations, including the U.S., believed there was agreement on the proposal of the International Chamber of Shipping (ICS), the International Shipping Federation (ISF), and the

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International Confederation of Free Trade Unions (ICFTU) in LEG 92/6/4 at paragraph 6, to amend a wage provision in the Guidelines, the report concluded that the Working Group was unable to reach consensus on any amendments to the Guidelines. The Chair of the Working Group, when introducing the report, explained that there had in fact been agreement in the group on the wage proposal. LEG 92/WP.7, para. 6.9.

¶B. Due to time constraints, the Committee did not approve the revised terms of reference for the Joint IMO/ILO ad hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident and agreed to retain the item on the agenda for the next Legal Committee meeting in the fall of 2007.

¶C. The U.S. intervened to state that we cannot fully implement the Guidelines and supported continuing review of the Guidelines by the Legal Committee. The Netherlands also intervened to state that because the Guidelines were not amended, they would continue, until a solution is found, to interpret the wages provisions in a way that is consistent with their domestic law in order to implement the Guidelines.

¶7. TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION: The Director of the Technical Cooperation Division proposed, in LEG 92/9/1, to report on the Technical Cooperation sub-programme related to maritime legislation biennially rather than on a semi-annual basis. The Committee decided that, for the time being, it is preferable to receive the reports semi-annually.

¶8. BIENNIUM ACTIVITIES WITHIN THE CONTEXT OF THE ORGANIZATION STRATEGIC PLAN: After some discussion noting the need for a clear programme of work and benchmarks to measure progress, the Legal Committee approved the Secretariat's proposed planned outputs for the Committee in part 2 of the annex to LEG 92/10. The Committee also approved amendments to the Guidelines on Work Methods and Organization of the Work of the Legal Committee accounting for the Strategic Plan of the Organization, annex 2 to LEG 92/10, and requiring the establishment of intersessional Correspondence Groups when Working Groups are formed, LEG 92/10/1. The revised Guidelines will be issued as LEG.1/Circ.4.

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